

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Sections 4601, *Service of a Notice of Violation or Warning Notice*, 4603, *Penalties for Licensed or Unlicensed Retailers*, 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, and 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Business and Professions Code (BPC) section 22971.2, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 4601, *Service of a Notice of Violation or Warning Notice*, 4603, *Penalties for Licensed or Unlicensed Retailers*, 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, and 4605, *Penalties for Licensed and Unlicensed Manufacturers and Importers*. The proposed amendments to Regulation 4601 provide for all notices issued under the Cigarette and Tobacco Products Licensing Act (Act) (div. 8.6 (commencing with § 22970) of the BPC) to be served personally or by mail in the manner prescribed for service of a notice under BPC section 22971.5. The proposed amendments to Regulations 4603 through 4605 provide the Board with discretion to reduce a person's suspension for a violation of the Act to "5 days," in addition to the Board's current discretion to reduce a person's suspension to 0 days, 10 days, and 20 days, when mitigating factors are present. The proposed amendments clarify cross-references to the BPC in Regulations 4603 through 4605 and make all four regulations' reference notes consistent with the content of their respective regulations.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605.

AUTHORITY

BPC section 22971.2.

REFERENCE

Regulation 4601:	BPC section 22971.5
Regulation 4603:	BPC sections 22973, 22974, 22974.3, 22974.4, 22974.7, 22980, 22980.1, 22980.2, and 22980.3
Regulation 4604:	BPC sections 22974.7, 22977, 22978.1, 22978.2, 22978.5, 22978.7, 22979.7, 22980, 22980.1, 22980.2, and 22980.3
Regulation 4605:	BPC sections 22974.7, 22979, 22979.4, 22979.5, 22979.6, 22979.7, 22980.1, 22980.2, and 22980.3

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

On October 12, 2003, the State of California enacted Assembly Bill No. (AB) 71 (Stats. 2003, ch. 890 (Horton)), and section 1 of AB 71 added the Act to the BPC. As originally enacted, the Act imposed licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. In 2006, the State of California enacted AB 1749 (Stats. 2006, ch. 501 (Horton)), which added new provisions to the Act that imposed the same licensing requirements on manufacturers and importers of tobacco products as were previously imposed on manufacturers and importers of cigarettes.

The Act is administered by the Board pursuant to BPC section 22971.2, and, in 2006, the Board adopted a number of regulations to implement, interpret, and make specific the Act's licensing requirements. As relevant here, the Board adopted Regulation 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*, to require the Board to issue a Notice of Violation or Warning Notice to a person that has been issued a citation for a violation of the Act, and the Board adopted Regulation 4601 to prescribe the manner in which a Notice of Violation or Warning Notice shall be served. The text of Regulation 4601 is based upon the text of Revenue and Taxation Code (RTC) section 30206, which provides for the service of a notice of determination issued under the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.).

The Board also adopted Regulations 4603, 4604, and 4605 to provide for the issuance of a Warning Notice, or the imposition of a 10-day, 20-day, or 30-day suspension, or the revocation of a license and the imposition of a fine for specified violations of the Act; and to provide for the reduction in the length of a suspension and changing a revocation to a 30-day suspension, when mitigating factors warrant. As relevant here, the second and third sentences in subdivision (f) of Regulations 4603 and 4604 and subdivision (e) of Regulation 4605 all currently provide that:

If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.4, 22978.6, or 22980.3, subdivision (a)(2).

Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 4601, 4603, 4604, and 4605

Amendments to Regulation 4601

A person has the right to appeal when the Board has alleged that the person violated the Act. When timely appeals are made, the Board is required to issue notices under Regulations 4700, *Appeal – Special Taxes and Fees Division*, 4701, *Appeal – Appeals Division*, and 4702, *Appeal – Board Hearing*. However, Regulation 4601 only prescribes the manner of serving a Notice of Violation or Warning Notice, and there is no regulation expressly prescribing the manner in which the Board shall serve other notices required to be served under the Act, such as the notices required by Regulations 4700 through 4702. Therefore, the intent and objectives of the proposed amendments to Regulation 4601 are to make the regulation prescribe the manner of serving all of the notices the Board is required to serve under the Act, require that all of the notices be served in the manner prescribed for service of a notice under BPC section 22971.5, and generally ensure that the regulation is consistent with BPC section 22971.5. The Board anticipates that the public, including regulated persons, will benefit from the increased openness and transparency regarding the procedures for the service of all notices required under the Act.

The text of the proposed amendments to Regulation 4601 is slightly different than the text that the Board approved on June 26, 2012. The original text provided that “Any notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice of determination under Revenue and Taxation Code section 30206 of the Cigarette and Tobacco Products Tax Law.” However, section 22971.5 was added to the BPC after the Board’s adoption of Regulation 4601 to prescribe the manner for serving any notice required under the Act. Therefore, the Board revised the approved text of the amendments to Regulation 4601, prior to beginning the formal rulemaking process, in order to make the text of the Board’s proposed amendments to Regulation 4601 fully consistent with the provisions of BPC section 22971.5, which are substantially similar to the provisions of RTC section 30206. The Board’s proposed amendments provide that “Any notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice under Business and Professions Code section 22971.5.”

Amendments to Regulations 4603 through 4605

Regulations 4603 through 4605 provide that a suspension period may be reduced to “0 days, 10 days, or 20 days” when mitigating factors warrant, but the regulations do not give the Board sufficient flexibility to reduce suspensions because there are situations where a 10-day suspension is too harsh, a 0-day suspension would not be sufficient to deter violations of the Act, and a suspension period of more than 0 days and less than 10 days would be appropriate. The intent and objectives of the proposed amendments to Regulations 4603 through 4605 are to add a 5-day suspension period to the regulations to specifically give the Board additional flexibility to reduce suspensions based upon staff’s belief that a 5-day suspension period is long enough to deter violations of the Act, in some circumstances, and that Board staff has a sufficient amount of time to perform an inspection during a 5-day suspension period. The Board anticipates that the Board and regulated persons will benefit by the establishment of a fair, 5-day suspension period to address such situations.

In addition, the intent and objectives of the proposed amendments to Regulations 4603 through 4605 are to clarify the regulations’ cross-references to statutes that require the revocation of retailers’, wholesalers’, distributors’, manufacturers’, and importers’ licenses for specified violations of the Act; and the Board anticipates that the Board and regulated persons will benefit from the additional clarity provided by the proposed amendments.

The proposed amendments also update the reference notes to Regulations 4601, 4603, 4604, and 4605 to better reflect the contents of each reference note’s regulation.

Business Taxes Committee Process

The Board approved the amendments to Regulation 4601, 4603, 4604, and 4605 (described above) during the Board’s June 26, 2012, Business Taxes Committee meeting, but, at the conclusion of the meeting, the Board voted to postpone proposing the amendments to Regulations 4601, 4603, 4604, and 4605 while the Board considered whether to propose the adoption of an additional regulation to implement, interpret, and make specific other provisions of the Act. During the Board’s January 15, 2013, Business Taxes Committee meeting, the Board unanimously voted to begin the formal rulemaking process to propose the amendments to Regulations 4601, 4603, 4604, and 4605 at this time, and the Board did not decide to propose to adopt a new regulation at that time.

The Board has performed an evaluation of whether the proposed amendments to Regulations 4601, 4603, 4604, and 4605 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 4601 is the only state regulation prescribing the manner for serving a notice issued under the Act and Regulations 4603 through 4605 are the only state regulations prescribing the Board’s discretion to reduce a suspension imposed under the Act. In addition, there are no comparable federal regulations or statutes to Regulations 4601, 4603, 4604, and 4605.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 4601, 4603, 4604, and 4605 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 4601, 4603, 4604, and 4605. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared underscored and strikeout versions of the text of Regulations 4601, 4603, 4604, and 4605 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which

includes the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 4601, 4603, 4604, and 4605 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 4601, 4603, 4604, and 4605, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.